IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE R.BASANT

MONDAY, THE 9TH JULY 2007 / 18TH ASHADHA 1929

Bail Appl..No. 4039 of 2007()

(CRIME NO.241/2007 OF THE KALPAKANCHERY POLICE STATION)

: PETITIONER/ACCUSED:

NIZAR, S/O. KUNJAVARAN,
AGED 28 YEARS, CHAKKALIPARAMBIL HOUSE,
THIRUNAVAYA, TIRUR TALUK, MALAPPURAM DISTRICT.

BY ADV. SRI.K.P.MUJEEB

RESPONDENTS:

1. STATE OF KERALA,
REPRESENTED BY PUBLIC PROSECUTOR,
HIGH COURT OF KERALA, ERNAKULAM.

2. SUB INSPECTOR OF POLICE,
KALPAKANCHERY POLICE STATION.

BY PUBLIC PROSECUTOR SRI.JAI GEORGE

THIS BAIL APPLICATION HAVING COME UP FOR ADMISSION ON 09/07/2007, THE COURT ON THE SAME DAY PASSED THE FOLLOWING:

R.BASANT, J.

B.A.No.4039 of 2007

Dated this the 9th day of July 2007

O R D E R

Application for anticipatory bail. The petitioner faces allegations inter alia under Section 353 I.P.C. A vehicle belonging to the petitioner was allegedly found to carry sand. Revenue officials wanted to intercept the vehicle. The driver of the vehicle sped away. The officials chased the vehicle. The vehicle was intercepted. The driver allegedly ran away before he was apprehended. He allegedly went and informed the petitioner, who happens to be the owner of the vehicle. The owner, along with some others, allegedly came to the scene of the crime, deterred the officials from performing their duties and took away the vehicle by force. A complaint has been filed. Investigation is in progress. The petitioner apprehends imminent arrest. The petitioner is the second accused in the crime.

2. The learned counsel for the petitioner submits that the petitioner is absolutely innocent. There was no sand in the

vehicle. The Village Officer, only on account of false prestige, has filed such a case against the petitioner. The petitioner was not present anywhere at the scene of the crime. His name was obtained by looking at the registration certificate which was available in the vehicle at the time when it was intercepted by the officials. In these circumstances, it is prayed that directions under Section 438 Cr.P.C may be issued in favour of the petitioner.

3. The learned Public Prosecutor opposes the application. The learned Public Prosecutor submits that there are no circumstances justifying the invocation of the extraordinary equitable discretion in favour of the petitioner. This is a fit case where the petitioner must resort to the ordinary and normal procedure of appearing before the investigating officer or the learned Magistrate having jurisdiction and then seek regular bail in the ordinary course, submits the learned Public Prosecutor.

4. I find merit in the opposition by the learned Public Prosecutor. I do not find any circumstances which would justify invocation of the extraordinary equitable discretion under

Section 438 Cr.P.C. This, I am satisfied, is a fit case where the petitioners must appear before the learned Magistrate or the investigating officer and seek regular bail in the normal and ordinary course.

5. In the result, this petition is dismissed. Needless to say, if the petitioner surrenders before the investigating officer or the learned Magistrate having jurisdiction and applies for bail, after giving sufficient prior notice to the Prosecutor in charge of the case, the learned Magistrate must proceed to pass appropriate orders on merits, in accordance with law and expeditiously.

(R.BASANT, JUDGE)

jsr

R.BASANT, J.

CRL.M.CNo.

ORDER

21ST DAY OF MAY2007